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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2021/2022

UCL3622 – COMPANY LAW II

(All Sections / Groups)

20 APRIL 2022

Reading Time: 9.00 am – 9.15 am
(15 Minutes)

Answering Time: 9.15 am – 12.15 pm
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This question paper consists of 3 pages with 5 questions only.
3. Answer **ALL** questions in **PART A** and **TWO (2)** questions only in **PART B**. Attempt **FOUR** out of FIVE questions. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPY** of the following statute into the exam venue:
 - i) Companies Act 2016
 - ii) Capital Markets and Services Act 2007

“Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

Answer ALL questions from Part A and TWO (2) questions ONLY from Part B.

PART A (50 MARKS): ANSWER ALL QUESTIONS

QUESTION 1

Morris, John and Paul are directors and shareholders of MJP Property Developments Sdn. Bhd. (MJP Property), a property development company, which owns and operates a cafe. Morris and John are brothers. John and Paul are friends and partners in an accounting firm. Morris, is an unemployed artist and has three young children. The total number of issued shares in MJP Property is 6,000 ordinary shares. Each shareholders had 2,000 shares. All the shares are fully paid.

MJP Property has been very successful but has not paid any dividends to its members for the last two years. Profits have instead been invested in further development projects. Morris' wife has recently died and he is very short of money to look after his family. He approaches John and Paul and asks them to consider whether MJP Property could begin to pay dividend again to its shareholders. John and Paul refuse to consider Morris' request as it would upset the "long-term goals of MJP Property". Morris is upset by this response and announces that he wants to sell his shares. John and Paul refuse to buy him out and demand that Morris resign as a director because he has lost his objectivity. Morris resigns reluctantly. He asks to see MJP Property most recent set of financial statement, John and Paul refuse to provide the information. Morris discovers accidentally that MJP Property has been paying large "management fees" to John and Paul's accounting firm. Morris consults you as his advocate and solicitor. He wants to know:

- a) should he bring a derivative or personal action against John and Paul? What factors should he take into account in making this decision?
(15 Marks)
- b) Whether there are remedies available to address abovementioned issues?
(10 Marks)

State your advice to Morris under the Companies Act 2016.

(Total: 25 Marks)

QUESTION 2

"A variation of class rights is in the best interest of the company because it allows the board to best manage the company's capital and should be supported by all shareholders".

Outline critically the above statement.

(Total: 25 Marks)

Continued...

PART B (50 MARKS): ANSWER ANY TWO (2) QUESTIONS ONLY

QUESTION 3

Ji-Soo holds 5 percent shares in Snowdrop Sdn. Bhd. (“Snowdrop”). Snowdrop is a company specialising in facial recognition technology. Ji-Soo heard that Snowdrop intends to amend a provision in its Constitution to change the nature of business. However, she did not receive any notice of meeting from Snowdrop calling for the Extraordinary General Meeting.

On the day of the meeting, Ji-Soo found out about the meeting when her friend, Soo-Ho, who is holding 7% of shares in Snowdrop inform her of the meeting and pass her the link to the meeting, as the meeting is conducted virtually. Ji-Soo attended the meeting but complaint that the meeting should be void due to failure to give notice to its members.

During the online voting process to vote on a resolution to amend the provision in the Constitution, Soo-Ho argued that his internet line was unstable thus making him unable to cast his votes in time during the proceedings of the meeting.

The Chairman, Mr. Jang proceeded with the meeting and requested Soo-Ho to cast his vote via proxy appointing him (Mr. Jang), to vote on Soo-Ho’s behalf.

Ji-Soo and Soo-Ho now would like to invalidate the meeting as they argued that the meeting was not conducted according to the law. Both Ji-Soo and Soo-Ho threatened to commence a legal action in court to challenge the validity of the resolution passed in the Extraordinary General Meeting.

Advise Snowdrop.

(Total: 25 marks)

QUESTION 4

Hometown Chacha Bhd. (“HCB”) was incorporated in Malaysia as a public company in 2001 carrying on a business of providing agro-based drone technology. Chief Hong, Ms. Yoon, and Gam-Ri are the directors of HCB. HCB was listed on Bursa Malaysia in 2011 with a capital of RM1,250,000.00 divided into 500,000 ordinary shares of RM2.50 each, the whole of which had been subscribed and paid up. According to the board of directors, the paid up capital is in excess of HCB’s needs and not required for its business.

Continued...

Thus, they wish to reduce the share capital in HCB and proposed the following:

- (i) That the capital of HCB. be reduced from RM1,250,000.00 to RM950,000.00, and that such reduction be effected by repayment of share capital to the shareholders.
- (ii) That RM950,000.00 be divided into 500,000 ordinary shares of RM1.90 each, reduced from RM1,250,000.00 divided into 500,000 ordinary shares of RM2.50 each.
- (iii) That such reduction is to be effected by repaying to the members the sum of 0.60 sen on every fully paid share held by them respectively, being capital in excess of the wants of HCB, and by reducing each of such shares of HCB from RM2.50 to RM1.90.

HCB had no debts. A provision in the HCB's constitution stated that, 'The company should be at liberty and have power to reduce its capital.'

The directors seek your advice on how they should proceed with their proposal.

(Total: 25 Marks)

QUESTION 5

Bangtan Sonyeodan Sdn. Bhd. ("BTS") is a private limited company which carries on a business of manufacturing metal appliances. In January 2021, the Company issued a debenture registering a floating charge secured over all BTS's assets both present and future in favour of Hana Bank. The debenture deed dated 10 January 2021 provided that:

"Without prejudice to any law which may have similar effect, the floating charge created in favour of Hana Bank will automatically be converted (without notice) with immediate effect into a fixed charge as regards all the assets subject to the floating charge upon the default of BTS to pay any principal amount or interest owed to Hana Bank."

Subsequently on 18 February 2021, BTS created a fixed charge over its warehouse in Kuala Lumpur to secure a loan from Dul Bank. The charge was unregistered.

Another fixed charge was then created over BTS's warehouse in Johor Bahru and accordingly registered in favour of Set Bank on 14 April 2021. At the time the registered fixed charge was created, Set Bank was not aware of the existence of the earlier charge that has been created in favour of Dul Bank.

On 1 December 2021, a winding up petition was filed against BTS and consequently, BTS was wound up on 18 January 2022.

Advise all parties on the nature, validity and priority of charges involved.

(Total: 25 marks)

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